IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 123 OF 1989
DATE OF DECISION: 02.08.2006

SAVITA JAISWAL AND OTHERS

....APPELLANTS

VERSUS

SHRI JOGINDER AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. JAGDISH MANCHANDA, ADVOCATE
FOR THE APPELLANT

MR. DEEPAK MISHRA, AAG, HARYANA

JUDGEMENT

This is an appeal filed by wife and two children of deceased Sanjai Jaiswal, who died in an accident with Haryana Roadway Bus bearing No. HRL 9308 on 12.11.1987 at about 9.15 A.M. at Pipli Bus Stand.

The primary issues raised herein are with regard to the quantum of compensation and also the cut imposed by the Tribunal to the extent of 40 % by holding that there was contributory negligence on the part of the deceased. It has come on record that the deceased was 31 years of age at the time of his death and was diploma holder in Civil Engineering and was employed as a Sectional Officer in Kurukshetra University, Kurukshetra. It has been proved on record that he was drawing pay of Rs. 1718/- per month He left behind his old mother, wife and two children. The Tribunal while assessing his dependency at Rs. 1200/-, applying a multiplier of 16, awarded a total of Rs. 2,30,400/-. Thereafter while imposing a cut of 40 % on account of contributory negligence, the amount payable to the claimants was fixed at Rs. 1,40,000/- (rounded off) which was ordered to be apportioned amongst the claimants.

Assailing, the finding recorded by the Tribunal on the issue of contributory negligence, the counsel for the appellant argued that the deceased was an employee of Kurukshetra University, Kurukshetra and as his family was residing at Ambala Cantt., he used to travel daily from his place of residence to his place of work. On the way, the bus was required to be changed at Pipli for going towards University. Being a daily passenger, the deceased was quite aware of the situation and was always careful while boarding and leaving the bus and no untoward incident ever occurred ever since he joined service. On the unfortunate day also, as in routine the deceased was boarding the bus from Pipli Bus Stand for going towards University the accident occurred, as a result of which the deceased was crushed under the rear wheel of the bus. There is an eye witness account on record in the form of statement of one Sh. Rakesh Kumar, who had lodged the FIR regarding the accident. In his statement, Rakesh Kumar stated that the bus in question stopped at a distance of 40-50 yards from the usual place of stoppage. The same was over crowded. Though he and one Chander Mohan managed to get in the bus but the deceased who was standing near the exit window was hit by the bus when it certainly started, as a result of which the deceased was crushed under the rear wheel of the bus. The bus was stopped after the passengers raised an alarm. Even in the statement of the driver the factum of the bus being over loaded is not denied rather he admitted that a large number of passengers were standing near the bonnet and on the front window of the bus, meaning thereby that it was not possible for him to see what was happening at the exit door or outside the exit door. Further his statement to the effect that it was an accident which occurred when the deceased tried to board the over crowded running bus is belied from his own statement when he stated that the bus being over crowded and the persons even standing near the bonnet and the front window, it was not be possible for him to see as to whether any person was running to get into the bus or not. In such a situation it was incumbent upon the driver and the conductor of the bus to be more careful and cautious while stopping and starting the bus so as to ensure that no untoward incident occur. Even the conductor of the bus, in his statement did not deny the fact that the bus was over crowded. He merely stated that the deceased was trying to board the bus while it was running. Resultantly the circumstances in which the

accident occurred and from the evidence on record, in my opinion, the only conclusion would be that the accident occurred only because of rash and negligent driving of the bus. The findings recorded by the Tribunal on this issue are reversed and accordingly, there would be no cut on this account.

Admittedly, deceased was 31 years of age, having Diploma in Civil Engineering and was employed with Kurukshetra University, Kurukshetra as a Sectional Officer, drawing a salary of Rs. 1718/- per month at the relevant time. He had long way to go. He would have risen in the career and accordingly, the salary would have also increased. Under the circumstances, in my opinion the dependency of the deceased should be assessed close to his income at the time of accident. Accordingly, the same is determined at Rs. 1600/- per month and keeping in view his age as 31 years applying the multiplier of 17, the amount of compensation assessed at Rs. 3,26,400/-. To this another a sum of Rs. 3600/- as transportation of the body from place of accident to the place of residence and funeral expenses etc. and a sum of Rs. 10,000/- on account of consortium, accordingly, a total of Rs. 3,40,000/- is awarded as compensation. The additional amount of compensation shall be paid by the respondents alongwith interest @ 7.5 % per annum from the date of application i.e. 10.12.1987 till the date of payment.

The additional amount of compensation alongwith interest shall be apportioned amongst the claimants-appellants in the following manner: i.e. 60 % of the amount shall be payable to the widow of the deceased, namely, Savita Jaiswal; 20 % each will be payable to two sons of the deceased.

The award of the Tribunal is modified to the extent indicated above and the appeal is disposed of accordingly.

August 02, 2006 **(RAJESH BINDAL)**
gsv **JUDGE**